

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN DOE,

Plaintiff,

v.

Civil Action No. 23-13112-JEK

CARLOS DEL TORO, *in his official capacity
as Secretary of the Navy,*

Defendant.

**ASSENTED-TO MOTION FOR LEAVE
TO FILE ADMINISTRATIVE RECORD UNDER SEAL**

Defendant, with Plaintiff's assent, respectfully moves the Court for leave to file the administrative record in this case under seal. Plaintiff's complaint seeks judicial review under the Administrative Procedure Act, which authorizes courts to "hold unlawful and set aside agency action, findings, and conclusions found to be," among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). "In applying that standard, the focal point for judicial review should be the administrative record." *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (per curiam); *see also Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977) ("[R]eview is to be based on the full administrative record that was before the Secretary at the time he made his decision."). The Navy has therefore been compiling the relevant administrative record for submission to the Court.

Although Defendant would normally file the administrative record on the Court's public docket, the record in this case contains significant discussions of Plaintiff's personal identifiable information (PII) and protected health information (PHI). Moreover, on February 27, 2024, the

Court granted Plaintiff's motion to proceed pseudonymously. ECF 12. Accordingly, to protect Plaintiff's PII and PHI from unwarranted disclosure and to ensure compliance with the Court's order granting Plaintiff pseudonymity without requiring extensive redactions, Defendant requests that the Court permit him to file the administrative record under seal. *See, e.g., Moncada v. Mayorkas*, No. 20-cv-11561-MPK (D. Mass. Sept. 7, 2022) (ECF 14) (granting motion to file administrative record under seal); *Patel v. Johnson*, No. 12-cv-12317-WGY (D. Mass. Aug. 5, 2013) (ECF 27) (same).

WHEREFORE, Defendant respectfully requests that the Court allow this motion and permit Defendant to file the administrative record under seal.

Respectfully submitted,

JOSHUA S. LEVY
Acting United States Attorney

Dated: February 29, 2024

By: /s/ Michael L. Fitzgerald
MICHAEL L. FITZGERALD
Assistant United States Attorney
U.S. Attorney's Office
1 Courthouse Way, Ste. 9200
Boston, MA 02210
(617) 748-3266
michael.fitzgerald2@usdoj.gov

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that I conferred with counsel for the Plaintiff, who assents to the relief requested by this motion.

/s/ Michael L. Fitzgerald
MICHAEL L. FITZGERALD
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Michael L. Fitzgerald
MICHAEL L. FITZGERALD
Assistant U.S. Attorney

Dated: February 29, 2024